



**The State of the Judicial Branch
Address to the First Session of the 50th Arizona Legislature
Delivered by Chief Justice Rebecca White Berch
March 21, 2011**

President Pearce, Speaker Adams, Members of the Senate and House of Representatives, Mr. Kanefield – on behalf of Governor Brewer, colleagues, guests, and fellow Arizonans:

Good afternoon and thank you for the invitation to speak with you today about the state of the Arizona Judicial Branch.

I am pleased to tell you that, despite trying times, the Judicial Branch in Arizona is strong. We are under great stress, but we stand with our partners in state government ready to meet the challenges that face our great state, and pursue the opportunities those challenges bring.

Before I begin my remarks, I would like to introduce the members of the Supreme Court. With me here are my colleagues Vice Chief Justice Andrew Hurwitz and Justice Robert Brutinel. Justices Bales and Pelander were not able to join us because of prior work-related commitments.

Next year, we will celebrate Arizona's centennial. While we celebrate our state's centennial, our nation just celebrated another 100th birthday – that of former President Ronald Regan. Our 40th President once cautioned us that, "Because we're a great nation, our challenges seem complex." He warned that "[i]t will always be this way. But as long as we remember our first principles and believe in ourselves, the future will always be ours."

In the judiciary, we do remember and have taken to heart those first principles: The value of hard work; the significance of respect, ethics, and professionalism; and the importance of believing in ourselves.

Although the state's centennial is still nearly a year away, this past year, we kicked off the court's centennial celebration by hosting a forum to commemorate the centennial of our state's constitution.

We spent an enlightening afternoon examining our constitutional beginnings, learning about the men who wrote our constitution, the many issues that they faced in creating the document, and how the constitution has both stood the test of time, yet remained flexible to meet the needs of a rapidly changing state.

That examination of our constitutional beginnings was an appropriate lead-in to the events that will take place in the next 10 months as we celebrate the 100th birthday of our great state.

OVERVIEW OF 2010

2010 was a busy year for the court system. At our court, we said farewell to Justice Michael Ryan and welcomed Justice Robert Brutinel.

When I spoke to you last year, we discussed the courts' strategic agenda: Justice 2020. This year, I'm happy to report progress on several initiatives set forth in that agenda.

We made great strides in improving the legal profession this year by implementing new attorney discipline rules and establishing the Office of Presiding Disciplinary Judge. That system is now up and running and the initial reports are positive.

Also this year, Arizona's court system took its first steps toward establishing statewide e-filing, an online court filing system that will make it easier for citizens to access justice and enable use of technology to reduce time, transportation, parking hassles, and costs, now and in the future.

Our hard-working court employees continued to meet the demands of the growing workloads of the courts.

More than 3 million cases were filed in FY 2010 in the Arizona Courts.

- That is an average of 11,734 cases filed each day.
- Tax Court filings increased by 70% in FY2010 over FY2009.
- During the same period, property tax actions increased by a whopping 90.3%; and
- Filings in contracts cases increased nearly 10%, to more than 33,000 cases.

JUDICIAL PRIORITIES

Though that casework has kept us busy, we have also focused on several goals of the strategic agenda. One of the key goals is "Protecting Children, Families, and Communities."

PROTECTING COMMUNITIES

One key way courts protect communities is through the efforts of our Adult Probation Departments.

Probation officers are among the unsung heroes of our community, doing work that is often thankless and sometimes dangerous, but occasionally rewarding. Adult probation officers manage approximately 80,000 open cases. As a result, we're constantly looking for ways to improve and to create efficiencies.

We have focused on increasing our effectiveness – and public safety – by employing Evidence Based Practices. These practices help protect the community and our staff, while improving the accountability of offenders and serving rehabilitative goals. At the same time, they save the state's money.

I want to highlight two areas of success:

1. Our efforts in the area of probation revocations and crime reduction;
2. The deportation of individuals who are in this country illegally and have been convicted of a felony.

First, regarding probation revocations and crime reduction: In 2008, the Arizona Legislature – you all – passed the Safe Communities Act. This bipartisan measure created incentives for probation agencies to focus on probation supervision rather than revoking offenders and putting them in jail or prison.

The Pew Center on the States conducted an independent review of Arizona data from the past two years. Just last month it released its study, which shows that the new practices are paying off in many ways. For example, there was a 28% reduction in revocations to state prisons, which is the equivalent of a reduction of 1,888 prisoners in the system. This has the potential to save the state tens of millions of dollars each year. Revocations to county jail have also decreased dramatically – by almost 39%.

But you need not worry that the decreased revocations endanger the public. New felony crimes committed by probationers have decreased by 31%.

This act is a wonderful example of how a partnership between the Legislature and the Judiciary can benefit the citizens of our state, saving money while keeping Arizonans safe.

Second, deporting convicted felons who are here illegally: In 2008, we changed the protocols for determining the legal status of individuals in the probation program. Regardless where you stand on the complex issue of immigration, those who are in our country illegally and have been convicted of having committed felony offenses here, if not put in prison, should not be able to remain in our communities. Since the implementation of new probation procedures, more than 12,000 people who have been convicted of violent crimes, sex offenses, domestic violence, and other felonies have been referred to ICE and have been removed from this state.

PROTECTING FAMILIES

Protecting families includes the court's efforts to protect the elderly and those who can't care for themselves.

The topic of probate court has recently received a bit of attention in the media. When the courts first started focusing on this area 20 years ago, we discovered that several million dollars had been stolen from the accounts of various wards. Both a high profile probate attorney and several fiduciaries went to prison. We acted aggressively to bring order to the system, by seeking laws to create a fiduciary board that licenses and regulates fiduciaries. Today, while most cases proceed through probate without issues, unfortunately some do not.

In March of 2010, I appointed Court of Appeals Chief Judge Ann Scott Timmer to lead a committee to look for ways to improve the oversight and processing of probate court matters.

This group includes representatives from several groups that may have opposing interests – citizens who have been involved in probate cases, fiduciaries, attorneys, senior citizen groups, parents of incapacitated children, and others. They held many public meetings and looked at all manner of potential solutions to address these seemingly intractable problems. And they advanced some solutions.

But it is not easy to regulate an area that interposes the courts directly into disputed family matters. These are highly emotional areas that may involve life and death decisions, the management of money, the care and well-being of loved ones, and other very personal issues.

And so this session, we are asking the legislature to assist us in making changes to improve the probate system in Arizona. We must examine and implement changes that will be effective and workable statewide, not just in Maricopa County. We must also be cautious that, in our efforts to solve problems, we don't create new and even greater ones. Finally, we must take care to not let a few high profile cases tempt us to adopt bad policy.

Our goal is to enact change that will

- Enhance transparency in the system;
- Reduce and control fees;
- Close loopholes for those who seek to do harm or unduly profit from the system; and
- Provide enhanced protection for those who are vulnerable .

Several of you are currently working on legislation in these areas, and we applaud your efforts. I know there are those, including some within the courts, who are critical of some of the proposed changes. No solution will please everyone. We simply caution that any proposed fixes must take into consideration all those affected by these cases, and all types of cases, from the very simple cases to those containing complex issues and circumstances.

As Chief Justice, I want to also assure you that the Supreme Court is looking at – and plans to adopt – court rules that respond to the problems we have observed. Let me be clear: There will be changes. No system that allows even a few cases to drain a person's resources can be justified.

Together, we will make our system work.

PROTECTING CHILDREN

In October of last year, Arizona celebrated the 25th anniversary of the Court Appointed Special Advocate Program, also known as CASA. The CASA Program is an advocacy organization that trains community volunteers to speak up for abused and neglected children in court.

CASA is unique. It is the only program in which everyday citizens are appointed by judges to speak up for a child's safety and well-being. A CASA volunteer is appointed by a juvenile court judge to be the "eyes and ears of the court." They speak with parents, foster

parents, Child Protective Services workers, teachers, and others, to help provide valuable information to the judge about what is best for the child.

Since the beginning of the program, more than 15,000 children have been assisted by CASAs. And Arizona volunteers are currently assisting approximately 1200 children.

The nearly 5000 CASA volunteers have come from all walks of life. They have volunteered – donated – nearly one million hours of time, saving our state millions of dollars while protecting the best interests of our children.

MERIT SELECTION

I would be oblivious if I had not noticed that there is legislation before you dealing with the way Arizona appoints and retains appellate judges and most of its superior court judges.

I quoted President Reagan earlier and will do so again. He understood and believed that “concentrated power has always been the enemy of liberty.”

Our founding fathers also felt strongly about this and created the courts as a co-equal branch of government in which judges would be able to be neutral and would be free to act independently and impartially. He understood this to be a critical part of our system of checks and balances – the third leg of the 3-legged stool. Judges must have the independence and job security to be able to do what the law requires, without fear of retaliation.

Arizona’s merit selection system has worked well since the voters established it in 1974, and its judges are highly regarded. Our present system ensures qualified judges and helps preserve judicial impartiality and integrity.

In fact, Arizona’s system of appointing and retaining judges is touted as one of the best in the country. How do we know this?

In October 2009, the US Chamber Institute (an arm of the US Chamber of Commerce) chose Arizona’s merit system as exemplifying best practices in more than 15 areas related to commission-based judicial selection.

Arizona’s system has also become an international example of best practices. Our judges are regularly called on to meet with representatives from other countries that are reviewing and revising their judicial systems. Countries such as Croatia, Japan, Uzbekistan, Turkey, Bulgaria, and Ukraine have sent judges or commissions to Arizona to learn more about our system.

Closer to home, Arizonans who come to court – the litigants, jurors, members of the public, attorneys – tell us that things are going well:

- 97% rated judges “satisfactory” or higher;
- 95% of court users reported being treated with courtesy and respect by court personnel;
- 90% said that they understood what happened in court and what they needed to do next, if anything.

The evidence shows that merit selection is working well. And common sense tells us that, “If it isn’t broken, don’t fix it.”

ACKNOWLEDGEMENT

Before I close, I would be remiss if I did not take a moment to acknowledge the terrible tragedy in Tucson. It affected all of us. But struck our judicial family especially hard because the judiciary lost a wonderful judge and a good friend, and the community lost an honorable leader in former Arizona Court of Appeals Judge and Federal District Court Judge John M. Roll.

On behalf of the judicial branch, I want to thank everyone for their prayers and outpouring of support, and we send our love and support to the families who lost loved ones, to those who were injured, including Congresswoman Gabrielle Giffords, and to their families and friends. Tragedies such as that one remind us that we need to mend our communities and our souls.

CLOSING

In closing, as you can probably tell, I am very proud to lead this branch and to work with its hard-working, dedicated employees providing important programs and services.

Whether a court employee works behind the counter at a clerk’s office, staffs a security entrance at a court building, or presides at a high-profile court hearing, we in the judicial branch take pride in what we do and in the part we play in our state government.

This past year has also underscored the value of the three branches of government working together, as we have successfully navigated a number of difficult challenges through common effort. I hope we can continue to do so.

Our constitution places a responsibility on each branch of government to exercise its authority in the best interest of the state. We must all be mindful of our constitutional roles and the foundational importance of our system of checks and balances. A three-legged stool cannot stand if one leg has been cut off. We should work toward the common goal of ensuring the best Arizona we can, now and in the future.

The service of all citizens is part of a tradition of giving that has made this state great for the last 100 years and will continue to sustain us through the next 100 years. We want a strong, effective judiciary to be a continuing part of that rich Arizona history.

That is my report on the State of the Judiciary. Thank you for your time.